

7300.5 Determining Liability for Claims for Physician and Supplier Services.--

A. Beneficiary's Liability.--In deciding whether the beneficiary or his representative knew, or could reasonably have been expected to know, that items and services he received were not reasonable and necessary, the beneficiary's allegation that he did not know, in the absence of evidence to the contrary, will be acceptable evidence for limitation of liability. However, there may be evidence that will rebut such an allegation. For example, when a beneficiary is receiving a course of treatment and had received a previous denial notice stating that the services were excluded from coverage, the previous denial notice, if it pertains to similar or reasonably comparable items or services, would constitute evidence that the beneficiary did have knowledge of exclusion. The most likely reason to find that the beneficiary knew or could reasonably have been expected to know that Medicare would not pay is where, before the item or service was furnished, the physician or supplier notified the beneficiary in writing of the likelihood that Medicare would not pay for the specific service and, after being so informed, the beneficiary agreed to pay the physician or supplier for the service.

The following statements would satisfy the requirements for the physician's/supplier's advance notice and the beneficiary's agreement to pay:

Physician/Supplier notice:

"Medicare will only pay for services that it determines to be 'reasonable and necessary' under section 1862(a)(1) of the Medicare law. If Medicare determines that a particular service, although it would otherwise be covered, is 'not reasonable and necessary' under Medicare program standards, Medicare will deny payment for that service. I believe that, in your case, Medicare is likely to deny payment for (specify particular services(s)) for the following reasons: (the physician/supplier gives the reason(s) for his or her belief)."

Beneficiary agreement:

"I have been notified by my physician/supplier that he or she believes that, in my case, Medicare is likely to deny payment for the services identified above, for the reasons stated. If Medicare denies payment, I agree to be personally and fully responsible for payment.

Signed,"

(Beneficiary Signature)

Statements of reasons similar to those in §7012, 16.0ff. are acceptable for advance notice purposes (i.e., to be acceptable, the advance notice must give the beneficiary an idea of why the physician is predicting the likelihood of Medicare denial so that the beneficiary can make an informed decision whether or not to receive the service and pay for it out-of-pocket).

The requirement for advance notice is not satisfied by a signed statement by the beneficiary to the effect that, should Medicare deny payment under §1862(a)(1), the beneficiary agrees to pay for the service. Nor can routine notices to beneficiaries which do no more than state that Medicare denial of payment is possible, or that the physician/supplier never knows whether Medicare will deny payment, be considered acceptable evidence of advance notice. Physicians/suppliers should not give notices to beneficiaries unless the physician/supplier has some genuine doubt regarding the likelihood of Medicare payment as evidenced by his or her stated reasons; giving notices for all claims or services is not an acceptable practice.

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D. Situations Where a Refund Is Not Required--Under §1842(1), a refund is not required of the physician if either of the following conditions is met:

1. The physician did not know and could not reasonably have been expected to know that Medicare would not pay for the services because they were not reasonable and necessary. To determine whether the physician knew, or could reasonably have been expected to know, use the rules for determining physician liability under §1879 of the Act. (See §7300.5B.)

2. Before the service was furnished, the physician notified the beneficiary in writing of the likelihood that Medicare would not pay for the specific service and, after being so informed, the beneficiary signed a statement agreeing to pay the physician for the service.

To qualify for waiver of the refund requirements of §1842(1), the advance notice to the beneficiary must be in writing, must clearly identify the particular service, must state that the physician believes Medicare is likely to deny payment for the particular service, and must give the physician's reason(s) for his/her belief that Medicare is likely to deny payment for the service.

A written notice covering an extended course of treatment is acceptable provided the notice identifies all services for which the physician believes Medicare will not pay. If, as the course of treatment progresses, additional services are furnished for which the physician believes Medicare will not pay, the physician must separately notify the patient in writing that Medicare is not likely to pay for the additional services and obtain the beneficiary's signed statement agreeing to pay.

The following statements satisfy the statutory requirements for the physician's advance notice and the beneficiary's agreement to pay:

Physician notice:

"Medicare will only pay for services that it determines to be 'reasonable and necessary' under section 1862(a)(1) of the Medicare law. If Medicare determines that a particular service, although it would otherwise be covered, is 'not reasonable and necessary' under Medicare program standards, Medicare will deny payment for that service. I believe that, in your case, Medicare is likely to deny payment for (specify particular services(s)) for the following reasons: (the physician gives the reason(s) for his/her belief)."

Beneficiary agreement:

"I have been notified by my physician that he/she believes that, in my case, Medicare is likely to deny payment for the services identified above, for the reasons stated. If Medicare denies payment, I agree to be personally and fully responsible for payment.

Signed,"

(Beneficiary Signature)

Statements of reasons similar to those in §7012, 16.0ff. are acceptable for advance notice purposes (i.e., to be acceptable, the advance notice must give the beneficiary an idea of why the physician is predicting the likelihood of Medicare denial so that the beneficiary can make an informed decision whether to receive the service and pay for it out-of-pocket).

The requirement for advance notice is not satisfied by a signed statement by the beneficiary to the effect that, should Medicare deny payment under §1862(a)(1), the beneficiary agrees to pay for the service. Nor can routine notices to beneficiaries which do no more than state that Medicare denial of payment is possible, or that the physician never knows whether Medicare will deny payment, be considered acceptable evidence of advance notice sufficient to set aside the refund requirements. Notices are not given to beneficiaries unless the physician has some genuine doubt regarding the likelihood of Medicare payment as evidenced by his/her stated reasons. Giving notices for all claims or services is not an acceptable practice.

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